IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 9TH JANUARY 2007 / 19TH PAUSHA 1928

CRP.No. 994 of 2002

RCA.39/1996 of THE RENT CONTROL PAPELLALTE AUTHJORITY(I ADDL. DISTRICT COURT), PALAKKAD
RCP.9/1990 of MUNSIFF COURT, ALATHUR
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REVN. PETITIONER: 2ND RESPONDENT/2ND RESPONDENT

T.V.KURIAKOSE,S/O.THANNIKODEN VARKEY
AGED 55 YEARS, HILL PRODUCE BUSINESS RESIDING
AT VADAKKANCHERRY AMSOM & DESOM,ALATHUR TALUK.

BY ADV. SRI.P.N.KRISHNANKUTTY ACHAN(SR.)
SRI.K.MOHANA KANNAN

RESPONDENTS: APPELLANTS & 1ST RESPONDENT/PETITIONER&1ST RESPON.
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1. MUHAMMED MOOSA, W/O.AHAMMED RAWTHER
AGED 60 YEARS, BUSINESS, RESIDING AT
CHEKKANTHARA,MUDAPPALLUR AMSOM ALATHUR TALUK.

2. T.V.PAULOSE,S/O.THANNIKODAN MATHAI KUNJU
AGED 61 YEARS,HGILL PRODUCE BUSINESS RESIDING AT
VADAKKANCHERRY AMSOM AND DESOM ALATHUR TALUK

R2 BY ADV. SRI.V.CHITAMBARESH (CAVEATOR)
R1 BY ADV. SRI.A.P.CHANDRASEKHARAN
SMT.PRABHA R.MENON
SRI.PUSHPARAJAN KODOTH
SRI.M.KRISHNAKUMAR
SRI.K.JAYESH MOHANKUMAR

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 09/01/2007, ALONG WITH CRP NO. 594 OF 2002 AND 1838/2002, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.A.ABDUL GAFOOR &

K.R. UDAYABHANU, JJ.

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C.R.P.NOS.594,994 & 1838 OF 2002

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DATED THIS THE 9th DAY OF JANUARY 2007

ORDER

Udayabhanu,J.

C.R.P.No.594/2002 is the revision petition filed by the first respondent tenant in R.C.P.No.9/1990 questioning the finding of the appellate authority allowing the prayer of the landlord under Section 11 (3) of the Kerala Buildings (Lease & Rent Control) Act,1965[Act 2 of 1965] {for short 'the Act'}. C.R.P.No.994/2002 is filed by the 2nd respondent claiming to be joint tenant in R.C.P.No.9/1990 challenging the finding of the appellate authority allowing the prayer under Section 11(3) of the Act and C.R.P.No.1838/2002 is filed by the 2nd respondent in R.C.P.No.9/1990 against the finding of the appellate authority in R.C.A.No.42/1996, i.e. separate appeal

filed by him against the order in R.C.P.No.9/1990. With respect to the finding on the dispute regarding the enrustment, i.e. whether the same was joint in favour of respondents 1 and 2 or exclusively in favour of the first respondent in the R.C.P, the Rent Control Court had rejected the prayer of the 2nd respondent that the entrustment was joint. The Rent Control Court also rejected the case set up by the landlord under Section 11(3) of the Act. The case of the petitioner/landlord is that the premises (ground floor) was entrusted to the first respondent on 1-7-1972 by the father of the petitioner and the upstair portion on 1-1-1983 to the same tenant on a rental of Rs.125/- and Rs.25/- respectively. He initiated the proceedings in the year 1990 seeking eviction for the bona fide need of his son Abdul Azeez who is allegedly unemployed and dependent on him, in order to start a stationary business. It was also alleged that the 1st respondent is having vast items of landed properties and also that he is running a match

factory. The other rooms are also available in the locality.

2. The R.C.Ps.were contested by the first respondent pointing out that the petitioner is a very rich man of the locality having a theatre and a number of other businesses, bus service, taxi service, and 20 acres of immovable properties. It is also alleged that the son Abdul Azeez is running a taxi and tempo service of his own. He has also claimed the protection of the second proviso to Section 11(2) of the Act.

3. The 2nd respondent, who is the brother of the first respondent, contended that the entrustment was jointly in favour of the respondents and he has also supported the version of the first respondent in opposing the bona fide need set up by the petitioner. The Rent Control Court dismissed the application on the ground that the petitioner/landlord is having another shop room kept vacant in Mudappallur and that he wanted to start the stationary business he

can start at Mudappallur and that Abdul Azeez, the son, is also running a taxi service and hence there is no necessity to start the business. It was also found that in Vadakkencherry wherein the petition schedule premises is situated and adjacent to the petition schedule premises there is a room, which is item No.2 in Ext.A1 belonging to the petitioner.

4. The appellate authority reversed the above findings on the ground that the first proviso to Section 11(3) would not be attracted as the vacant shop room is situated in another locality which is about 15 kilo metres away from Vadakkancherry. It was also found that the adjacent room to the petition schedule premises which is item No.2 in Ext.A1 is only a lean-to. The contention that the son of the petitioner is running the taxi service was found to be inadequate to meet the livelihood of the petitioner and upheld the case that the son of the petitioner is in need to start the stationary business to earn his livelihood. PW1, the petitioner as well as PW4, the son of the petitioner

for whom the premises was sought were examined. They have deposed in terms of the averments in the petition. Counsel appearing for the revision petitioners have relied on the evidence of PW1 to contend that PW4 for whom the premises is sought is also engaged in the other business and that PW1, the petitioner is over seeing the entire business establishments and that the petitioner and his sons are living in the same house. It is admitted that the petitioner has got five sons and it is the case of the petitioner that all his other sons except PW4 is engaged in the other businesses. It was brought out that PW4 is married and has got two children. It cannot be envisaged that the present joint family set up will continue for ever. Hence, the need of the petitioner to settle his son with a separate business cannot be said to be not bonafide. There is no evidence to show that PW4 is having any other assets in his name except a tourist taxi. There is no objective evidence to establish the fact that the

petitioner is running the tourist taxi prior to the filing of the petition. It has also to be noted that PW4 is running a taxi and that he was engaged as a driver is not concealed. PW4 has deposed that right now he is unable to drive the taxi on account of certain eye disease etc.and that the income from the taxi is meager after remitting the C.C.

5. We find that the appellate authority has exhaustively considered the evidence adduced in the matter. The fact that the petitioner is having a shop room at Mudappallur which was stressed by the Rent Control Court and the revision petitioner cannot be a ground to attract by the first proviso to Section 11(3) of the Act as Mudappallur is an area situated 15 kilo metres away from Vadakkancherry where the business is sought to be started. No effort was made by the respondents/tenants to establish that the same is reasonably sufficient to conduct the proposed business. Apparently, the description of the space in Ext.A1 is that it is only a lean to . Evidently, the

same cannot be treated as a shop room and in the absence of any contra evidence, the description of the above space in Ext.A1 has to be accepted as true. So far as the contention that PW4 is also in charge of the stationary business allegedly conducted by his brother, apart from the interested testimony of the contesting respondents, there is no other evidence to sustain the same.

6. Hence, we hold that the finding of the appellate authority in favour of the petitioner/landlord that the need urged is bona fide is not liable to be disturbed. So far as the claim set up regarding the protection of the second proviso to Section 11(3) of the Act, it was brought out in evidence that the first respondent owned a number of items of immovable properties vide entries in the basic tax register and counterfoil of the tax receipts produced by the concerned officer of the local authority. It was also found that he is running a match factory vide licence and demand register produced. The above itself is

sufficient to hold that the first respondent is not entitled the protection to the second proviso to Section 11(3) of the Act.

7. So far as the contention of the 2nd respondent in the R.C.P. who has filed C.R.P.No.1838 & 994 of 2002 is concerned, the findings are concurrent that the entrustment was in favour of only the first respondent. Although the entrustment was oral the assessment register showed the name of the first respondent alone. It was also noted that with respect to the right over tenancy right in the petition schedule premises and the business therein, separate proceedings are pending vide A.F.A.No 48/94. For the purpose of the present proceedings, we find that an adjudication as to the tenancy right claimed by the 2nd respondent in the R.C.P. is not specifically called for as the matter is pending on the civil side. In this regard we confirm the findings of the courts below.

8. In the result, the findings of the appellate authority is affirmed and the revision petitions are

dismissed.

Counsel for the revision petitioners has sought for time to vacate the premises pointing out that the tenants have to make arrangements to shift the business which is being conducted in the shop room for more than three decades. Hence, he sought for 4 months time which was not opposed by the counsel for the landlord. In the circumstances, the tenant, who is the first respondent in the R.C.P., is granted four months time from today onwards to vacate the premises on condition that he shall remit the entire arrears of rent, if any, and continue to remit the rent due and file an affidavit before the execution court within 20 days from today undertaking as above and that the premises shall be vacated on or before 9-5-2007.

K.A.ABDUL GAFOOR
JUDGE

ks.

K.R.UDAYABHANU,
JUDGE

K.A.ABDUL GAFOOR &
K.R.UDAYABHANU, JJ

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C.R.P.NOS.594,994 & 1838
OF 2002

ORDER

DATE: 9-1-2007

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